HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL No.1100 OF 2005

Between:

Depot Manager,
Andhra Pradesh State Road Transport
Corporation, Midhani Depot, Hyderabad. …
Appellant

AND

C.Narayana & another. ...Respondents

: J U D G M E N T :

Counsel for the appellant : Sri V.T.M.Prasad

Counsel for respondent No.1 : Sri A.Giridhar Rao
for Sri V.Srinivas

3rd July, 2006

Per G.S.SINGHVI, C.J.

This appeal is directed against order dated 17-12-2004 vide which the learned Single Judge allowed the writ petition filed by respondent No.1, C.Narayana, quashed award dated 17-12-2004 passed by Industrial Tribunal-II, Hyderabad (for short, 'the Tribunal) in I.D.No.258 of 2000 and ordered his reinstatement with consequential benefits.

Respondent No.1 joined the services of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') in the year 1990. In January, 1987, the bus driven by him was involved in an accident with an auto near Midhani (Hyderabad), as a result of which three persons travelling in the auto died. He was prosecuted for the offence under Section 304-A read with Section 337 of the Indian Penal Code. XII Metropolitan Magistrate, Hyderabad convicted and sentenced him to imprisonment for six months and also pay a fine of Rs.500/- and undergo further imprisonment of one month in the event of non-payment of fine. Criminal Appeal No.189 of 1998 preferred by respondent No.1 was allowed by VI Additional Metropolitan Sessions Judge, Hyderabad, vide his judgment dated 16-10-1998. For the sake of convenient reference, paragraphs 17 and 18 of that judgment are reproduced below:

> "17. The contention of the appellant counsel is that in fact D.W.1 was travelling in the accident bus. If his evidence coupled with the evidence of P.W.1 is taken into consideration, it can be said that there is no negligence on the part of the

accused in driving the said bus and causing accident. The contention of the appellant counsel is that there is no necessity for D.W.1 to speak in that manner if really the same was not witnessed by him. It is not elicited from D.W.1 that he is related to the accused or friend of the accused and as such he gave evidence in that manner to help the accused. Apart from the evidence of D.W.1, the evidence of P.W.1 also disclosed the manner in which the accident took place. As already discussed by me, the accident was not occurred due to the rash or negligent driving of the bus bearing No.AAZ 6255 by the accused at the relevant time. Hence, the finding of the learned Magistrate that the prosecution proved that the accident was caused due to rash and negligent driving of the bus bearing No.AAZ 6255 by the accused cannot be said to be correct. In view of my above discussion, the accused is entitled for benefit of doubt. Hence, I am of the view that the prosecution failed to prove the guilt of the accused for the offence under Sections 337 and 304-A IPC beyond all reasonable doubt. Hence, I decide the point accordingly.

18. In the result, this appeal is allowed setting aside the conviction and sentence passed by the XII Metropolitan Magistrate, Hyderabad in C.C.No.140/97 on 23-7-1998 and the accused is found guilty of offences u/s 337 and 304-A IPC and he is acquitted for the said offences. The accused is entitled for refund of the fine amount if any paid after the appeal time is over. Bail bonds executed by the accused shall stand cancelled."

(emphasis added)

In the meanwhile, a departmental enquiry was initiated against respondent No.1 and he was dismissed from service on being found guilty of the following charges:

"1. For having caused fatal accident to vehicle No.AAZ 6244 with an auto bearing No. AP 11 T 6391 near Akberbagh X Roads at about 13.10 hours, on 18-1-1997 which is a misconduct in terms of Clause 20(ix)(b) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

2. For having driven the vehicle in rash and negligent

manner resulting in the death of 3 occupants of auto bearing No.AP 11 T 6301 which is a misconduct in terms of Clause 28(ix)(b) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

3. For having caused minor injuries to auto driver and another occupant by name Abdul Majeed which is a misconduct in terms of Clause 28(ix)(b) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963.

4. For having caused extensive damages to auto (auto completely shattered) and minor damages to AAZ 6255 which is a misconduct in terms of Clause 28(xiii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963."

Respondent No.1 challenged his dismissal by raising an industrial dispute, which was registered as I.D.No.258 of 2000. The Tribunal found that the departmental enquiry against respondent No.1 was vitiated due to violation of the rules of natural justice. However, by taking into consideration the evidence produced before it, the Tribunal declared that the charges levelled against respondent No.1 are proved and the punishment of dismissal from service imposed on him was commensurate with the misconduct found proved. Paragraph 17 of the award of the Tribunal, which contains the reasons, which promoted the Tribunal to approve the action of the employer, reads as under:

"In all these decisions, the principle enunciated is one and the same. The standard of proof required in a criminal case is different from the standard of proof required in the departmental proceedings. While in the departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond a reasonable doubt. It is possible that a person can be found guilty of commission of misconduct despite his acquittal in the criminal trial. There may be an ample evidence in the departmental proceedings even though the delinquent was acquitted in a criminal case on the same set of facts due to lack of evidence. Even though the

delinquent was acquitted in a criminal case, he is not entitled to claim the same benefit in a departmental enquiry on the plea that the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without being a variance. The nature of evidence in a criminal trial is entirely different from the departmental proceedings. In a criminal case the prosecution has to prove its case beyond a reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Basing on the said principles of law, it cannot be said that the petitioner must be reinstated into service due to his acquittal in the criminal case even if on the same set of facts. As already observed, there is an ample evidence in the departmental proceedings to prove the misconduct of the petitioner for the charges levelled against him which is already discussed. As already observed, the departmental enquiry requires only the preponderance of probabilities but not the strict proof. Hence, the acquittal of the petitioner in a criminal case is no way helpful to him. If the petitioner is more careful in driving the vehicle, he would have saved the precious lives of the deceased on whom their wives and children were depending. Hence, it is clear that the proved misconduct of the petitioner is a gross misconduct. When once the proved misconduct is a grave misconduct and thereby the punishment is not shockingly disproportionate to the gravity of the misconduct, this tribunal has no jurisdiction at all to interfere with the findings of the disciplinary authority. Hence, it is clear that there are no merits in this petition and the petition is liable to be dismissed and accordingly dismissed."

Respondent No.1 challenged the award of the Tribunal in Writ Petition No.3589 of 2002. The learned Single Judge held that even though the Tribunal was justified in considering the evidence

produced by the Corporation, the finding recorded by it on the merits of the charges levelled against respondent No.1 is legally unsustainable. The learned Single Judge took into cognizance of the factum of respondent No.1's acquittal by the appellate Court in Criminal Appeal No.189 of 1998 and held that in view of the categorical finding recorded by the judicial forum that he was not guilty of rash and negligent driving, the contrary finding recorded by the Tribunal was unsustainable. Accordingly, he allowed the writ petition and quashed the award with a direction to the Corporation to reinstate him with full back wages and continuity of service.

Sri V.T.M.Prasad, learned counsel for the Corporation put-forward the stock argument that the standard of proof required for proving a charge in the departmental enquiry is substantially different than the one required for holding a person guilty of criminal offence and submitted that the learned Single Judge gravely erred by upsetting an otherwise well reasoned award passed by the Tribunal. Sri Prasad relied on the judgments of the Supreme Court in **Depot Manager, A.P.S.R.T.Corpn. v. Mohd. Yousuf Miya**[1], and of this Court in **Y.C. Rajwas v. Commandant, CISF, Adilabad**[2] and **V.Srinivas v. Superintendent of Police, Medak District**[3] and argued that the finding recorded by the Tribunal that the charges levelled against respondent No.1 have been proved could not have been upset by the learned Single Judge merely because he felt that a different view was possible.

Sri A.Giridhar Rao, Advocate appearing for Sri V.Srinivas, counsel for respondent No.1 supported the order under challenge and argued that the learned Single Judge did not commit any error by setting aside the award because the finding recorded by the Tribunal

that respondent No.1 was guilty of rash and negligent driving was perverse. Learned counsel emphasized that in view of the categorical finding recorded by VI Additional Metropolitan Sessions Judge, Hyderabad that respondent No.1 was not guilty of rash and negligent driving, the Tribunal could not have held the same charge as proved and that too on the basis of scanty evidence produced by the Corporation.

We have thoughtfully considered the respective arguments. A careful reading of the judgment of Criminal Appeal No.189 of 1998 shows that respondent No.1 was prosecuted for the offence under Section 304-A read with Section 337 of the Indian Penal Code on the premise that the accident had occurred due to rash and negligent driving of the bus by him and as a result of that three persons travelling in the auto were killed. The prosecution examined 12 witnesses including P.W.1, Driver of the auto bearing No.AP-11-T-6301; P.W.2, who was one of the occupants of the auto; P.W.9, Photographer, who took photographs of the scene of the accident; P.W.11, Motor Vehicle Inspector, who inspected the bus, and P.W.12, Inspector of Police, who recorded the statement of P.W.1. The trial Court accepted the prosecution case and convicted respondent No.1. On appeal, VI Additional Metropolitan Sessions Judge, Hyderabad held that there was no negligence on the part of the accused, i.e., respondent No.1 in driving the bus and causing the accident. This is clearly borne out from the above reproduced portions of the judgment of the appellate Court. Before the Tribunal, the Corporation produced the statement of the auto driver as Ex.M3, statement of the service conductor as Ex.M4, statement of respondent No.1 as Ex.M2, and rough sketch of the spot as Ex.M1. The Tribunal relied on this evidence and held that the charge of rash and negligent driving and causing of fatal accident is

proved against respondent No.1. While doing so, the Tribunal referred to the judgments of the Supreme Court in **Depot Manager, A.P.S.R.T.Corpn. v. Mohd. Yousuf Miya** (supra), and of this Court in **Y.C. Rajwas v. Commandant, CISF, Adilabad** and **V.Srinivas v. Superintendent of Police, Medak District** (supra) and distinguished the judgment of the Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.**[4]**.**

In our opinion, the approach adopted by the Tribunal in dealing with the issue of rash and negligent driving of the bus by respondent No.1 was ex facie erroneous inasmuch as it relied on the evidence of the same person whose testimony was not accepted by the appellate Court. A casual reading of the award may give an impression that the Tribunal had assigned cogent reasons for holding respondent No.1 guilty of the charges, but a minute scrutiny thereof reveals that the Tribunal conveniently overlooked the categorical finding recorded by the judicial forum i.e., VI Additional Metropolitan Sessions Judge that the charge of rash and negligent driving has not been proved against respondent No.1. The Tribunal also overlooked the true ratio of the Supreme Court's judgment in **Capt. M. Paul Anthony's** case (supra). Therefore, the learned Single Judge did not commit any error by reversing the award and ordering reinstatement of respondent No.1 with consequential benefits.

It is settled law that trial of the criminal case and disciplinary proceedings can go on simultaneously and that acquittal in criminal case will, by itself, not operate as a bar to the holding of the disciplinary proceedings – **R.P.Kapur v. Union of India**[5]**, Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G.Modak**[6]**, Depot Manager, A.P.S.R.T.Corpn. v.**

Mohd. Yousuf Miya (supra), **State of Rajasthan v. B.K.Meena**[7], **Kendriya Vidyalala Sangathan v. T.Srinivas**[8] and **Anil Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Limited, Haldia**[9], but it is equally well settled that while considering this issue, the Court has to bear in mind that once a person is tried for a criminal offence and is honourably acquitted or completely exonerated of the charge, it would not be expedient to continue a departmental enquiry on the same charge and he cannot be punished for the same charge by ignoring the findings recorded by the Court. This proposition of law is clearly discernible from the judgment of the Supreme Court in **Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G.Modak** (supra), which reads as under:

> "The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. **Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence,** but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered."
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> (emphasis supplied)

In **Capt. M.Paul Anthony v. Bharat Gold Mines Ltd.** (supra), the Supreme Court considered the question whether departmental proceedings and criminal prosecution launched on the basis of the same set of facts can continue simultaneously. The facts of that case were that while he was serving as Security Officer under the

employment of Bharat Gold Mines Ltd., a raid was conducted at his house and mining sponge gold ball weighing 4.5 grams and 1276 grams of gold bearing sand were recovered. Immediately thereafter, a first information report was lodged and a criminal case was registered against the appellant. He was also placed under suspension and a regular departmental enquiry was instituted on the charge of recovery of the sponge gold ball and gold bearing sand from his house. The appellant applied for stay of the enquiry, but his plea was rejected by the employer. The writ petition filed by the appellant was disposed of by the Karnataka High Court with a direction that the appeal preferred by him should be decided by the competent authority. The competent authority rejected his appeal and continued the departmental proceedings. On being found guilty, the appellant was dismissed from service vide order dated 7-6-1986. After eight months, he was acquitted in the criminal case. He represented for reinstatement, but his request was turned down. He then filed writ petition, which was allowed by the learned Single Judge of the Karnataka High Court. On appeal by the employer, the Division Bench of that High Court reversed the order of the learned Single Judge and dismissed the writ petition. The Supreme Court reviewed various judicial precedents on the subject including those of **State of Rajasthan v. B.K. Meena** and **Depot Manager, A.P.S.R.T.Corpn. v. Mohd. Yousuf Miya** (supra) and culled out the following propositions:

> "(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and

fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

The Supreme Court then considered the merits of the appellant's challenge to the order of punishment and accepted the same by recording the following observations:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. <u>They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the</u>

conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand."

(underlining is ours)

The proposition laid down in the aforementioned judgment was reiterated in **G.M.Tank v. State of Gujarat**[10]. The facts of that case show that the appellant was charged for the offence of acquisition of movable and immovable properties disproportionate to his known sources of income. After holding enquiry, he was dismissed from service. The writ petition and letters patent appeal were dismissed by the Gujarat High Court. In the criminal case, he was honourably acquitted with the finding that the prosecution has failed to prove the charge. While allowing the appeal preferred by the appellant against the judgment of the Gujarat High Court, the Supreme Court held:

"This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other departmental witnesses were examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond

> any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand……Thus, as the facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in ***Paul Anthony*** case will apply."
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> (underlining is ours)

In our opinion, the ratio of the last mentioned two judgments is squarely attracted in the present case because the allegations, which formed the basis of the charges levelled in the departmental enquiry and the criminal prosecution, were the same. It was alleged that due to rash and negligent driving of respondent No.1, the bus of the Corporation met with an accident resulting in the death of three persons. The trial Court convicted him, but on appeal VI Additional Metropolitan Sessions Judge, Hyderabad categorically held that the charge of rash and negligent driving is not proved against the accused (respondent No.1 herein). The only person who was examined by the Corporation before the Tribunal in the proceedings of the industrial dispute was the Driver of the auto, whose evidence was not believed by the appellate Court. Unfortunately, the learned Presiding Officer of

the Tribunal completely overlooked the finding recorded by VI Additional Metropolitan Sessions Judge, Hyderabad and held respondent No.1 guilty of rash and negligent driving. In our opinion, the approach adopted by the Tribunal was clearly contrary to the law laid down by the Supreme Court and the learned Single Judge rightly quashed the award passed by it.

In the result, the appeal is dismissed.

G.S.SINGHVI, C.J.

3rd August, 2006.

G.V.SEETHAPATHY,J,

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[1] AIR 1997 SC 2232
[2] 1998 (4) ALD 619
[3] 2001 (2) ALT 1
[4] (1999) 3 SCC 679
[5] AIR 1964 SC 787
[6] AIR 1984 SC 626
[7] (1996) 7 SCC 417
[8] (2004) 7 SCC 442
[9] JT 2005 (8) SC 425
[10] (2006) 5 SCC 446